

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**



**FILED**

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In the Matter of the Application of California-American Water Company (U 210 W) for a Certificate of Public Convenience and necessity to Construct and Operate its Coastal Water Project to Resolve the Long-Term Water Supply Deficit in its Monterey District and to Recover All Present and Future Costs In Connection Therewith in Rates.

A.04-09-019  
(Filed September 20, 2004)

**MOTION OF THE INDEPENDENT RECLAIMED WATER USERS GROUP  
TO STRIKE THE REPLY COMMENTS OF THE  
MONTEREY PENINSULA WATER MANAGEMENT DISTRICT**

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December 12, 2006

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

In the Matter of the Application of California-American Water Company (U 210 W) for a Certificate of Public Convenience and necessity to Construct and Operate its Coastal Water Project to Resolve the Long-Term Water Supply Deficit in its Monterey District and to Recover All Present and Future Costs In Connection Therewith in Rates.

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Pursuant to Rule 11.1 of the California Public Utilities Commission's ("Commission") Rules of Practice and Procedure, the Independent Reclaimed Water Users Group ("IRWUG")<sup>1</sup> hereby moves to strike the Reply Comments of the Monterey Peninsula Water Management District, dated December 11, 2006 ("MPWMD Reply Comments"), including the attachment thereto. The reply comments and attachment are an impermissible attempt to introduce new evidence through reply comments, in violation of both Rule 14.3(d), which limits the appropriate content of reply comments, and Rule 13.4, which prescribes the standards for reopening the record and submission of additional evidence. Both the comments and the letter should be stricken from the record.

On December 11, 2006, MPWMD filed and served reply comments on the November 14, 2006, Proposed Decision ("PD") of Administrative Law Judge Patrick in Phase I of this proceeding. MPWMD's reply comments consist of a one-paragraph introduction to the Pebble Beach Company ("Pebble Beach") and a four-page letter from Pebble Beach addressed to the

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<sup>1</sup> IRWUG is an unincorporated association of the Monterey Peninsula Country Club ("Monterey Peninsula"), the Cypress Hills Country Club ("Cypress Hills"), and the NCGA Poppy Hills Golf Course ("Poppy Hills").

Administrative Law Judge which MPWMD attaches to its reply comments.<sup>2</sup> MPWMD's reply comments serve solely as a vehicle for Pebble Beach to add to the record testimony that Pebble Beach could not introduce itself because it chose not to become a party to this proceeding, and because the time has long passed for the introduction of evidence.

MPWMD's submission of the letter/testimony from Pebble Beach attempts to supplement the record at literally the 11<sup>th</sup> hour. It introduces new testimony at the last minute in this proceeding, and in a manner that precludes parties from either testing the accuracy and validity of that testimony through cross-examination or responding to it through rebuttal testimony or reply comments.

The Commission should reject this attempt by MPWMD and Pebble Beach to submit new evidence at this point in the proceeding. Pebble Beach could have intervened in this proceeding and participated by sponsoring testimony, cross-examining witnesses, and filing briefs and comments on the PD. It chose not to do so. While the parties committed substantial time and resources and developed a record on which the Commission can now base a decision, Pebble Beach waited until the point in the proceeding at which parties would be unable to respond to its new claims.

Instead of making the same commitment all of the parties made, and following the same rules all of the parties followed, Pebble Beach, with MPWMD's collaboration, now wants to inject its factual claims into the record at the last minute in a manner that would enable it to avoid having to substantiate those claims. The Commission should reject Pebble Beach's

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<sup>2</sup> Pebble Beach served a motion to intervene, a motion to shorten time for parties to respond to that motion, and reply comments on the parties by e-mail on the afternoon of December 11, 2006. Pebble Beach then withdrew those pleadings 15 minutes later. A short while later MPWMD served its reply comments with Pebble Beach's letter attached. Pebble Beach's letter is substantively identical to the reply comments Pebble Beach first served, then withdrew.

impermissible end-run around the Commission's rules.

The MPWMD Reply Comments and Pebble Beach letter violate Rule 14.3(d), which mandates that reply comments be limited to identifying misrepresentations of law, fact, or condition of the record contained in the comments of other parties. Instead, the reply comments and letter attempt to introduce brand new evidence for the first time.

The MPWMD Reply Comments and Pebble Beach letter also violate the requirements of Rule 13.14 for reopening the record for the taking of additional evidence. Rule 13.14 requires a party seeking to introduce new evidence after the record has closed to (1) "specify . . . the material changes of fact or of law alleged to have occurred since the conclusion of the hearing;" and (2) explain why the new evidence sought to be introduced was not previously introduced. The MPWMD Reply Comments and Pebble Beach letter do neither.

MPWMD's Reply Comments and Pebble Beach's late-filed testimony violate the Commission's procedural rules and fundamental fairness. They should be stricken from the record.

Respectfully submitted,

By: /s/ Christopher Hilén

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Dated: December 12, 2006

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

In the Matter of the Application of California-American Water Company (U 210 W) for a Certificate of Public Convenience and necessity to Construct and Operate its Coastal Water Project to Resolve the Long-Term Water Supply Deficit in its Monterey District and to Recover All Present and Future Costs In Connection Therewith in Rates.

A.04-09-019  
(Filed September 20, 2004)

**[PROPOSED] RULING GRANTING THE MOTION OF THE  
INDEPENDENT RECLAIMED WATER USERS GROUP  
TO STRIKE THE REPLY COMMENTS OF THE  
MONTEREY PENINSULA WATER MANAGEMENT DISTRICT**

On December 12, 2006, the Independent Reclaimed Water Users Group (“IRWUG”)<sup>1</sup> filed a motion to strike the Reply Comments of the Monterey Peninsula Water Management District filed in this proceeding on December 11, 2006 (“MPWMD Reply Comments”). The MPWMD Reply Comments include as an attachment a four-page letter from the Pebble Beach Company addressed to the Presiding Administrative Law Judge.

The Pebble Beach’s letter conveys the views of Pebble Beach as to certain events surrounding the Monterey Reclamation Project and as to the effect of the Coastal Water Project Surcharges exemption that is approved in the Proposed Decision issued for comment on November 14, 2006.

MPWMD’s Reply Comments and the Pebble Beach letter would inject new factual claims into the record after the record has closed and without permitting parties to test or respond to the claims. The MPWMD Reply Comments therefore violate Rule 14.3(d), which limits reply comments to identifying misrepresentations of law, fact or condition of the record contained in

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the comments of other parties.

The MPWMD Reply Comments and the Pebble Beach letter violate the requirements of Rule 13.14 for reopening the record for the taking of additional evidence, because they fail to specify the material changes of fact or of law alleged to have occurred since the conclusion of the hearing; and they fail to explain why the new evidence sought to be introduced was not previously introduced.

Therefore, IT IS RULED that, the Motion of the Independent Reclaimed Water Users Group to strike the Reply Comments of the Monterey Peninsula Water Management is granted.

Dated \_\_\_\_\_, 2006

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Administrative Law Judge

**CERTIFICATE OF SERVICE**

I, Judy Pau, certify:

I am employed in the City and County of San Francisco, California, am over eighteen years of age and am not a party to the within entitled cause. My business address is 505 Montgomery Street, Suite 800, San Francisco, California 94111-6533.

On December 12, 2006, I caused the following to be served:

**MOTION OF THE INDEPENDENT RECLAIMED WATER USERS GROUP  
TO STRIKE THE REPLY COMMENTS OF THE  
MONTEREY PENINSULA WATER MANAGEMENT DISTRICT**

via electronic mail to all parties on the service list A.04-09-019 who have provided the Commission with an electronic mail address and by First class mail on the parties listed as "Appearance" and "State Service" on the attached service list who have not provided an electronic mail address.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on the date above at San Francisco, California.

\_\_\_\_\_  
/s/ Judy Pau

Judy Pau

# CALIFORNIA PUBLIC UTILITIES COMMISSION

## Service Lists

**Proceeding: A0409019 - CALIFORNIA-AMERICAN**  
**Filer: CALIFORNIA-AMERICAN WATER COMPANY**  
**List Name: LIST**  
**Last changed: December 8, 2006**

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